

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Peoria County, Illinois,
Petitioner,

vs.

The Burlington Northern and Santa Fe Railway Company, and
State of Illinois, Department of Transportation,
Respondents.

T04-0056

Petition seeking an order from the Illinois Commerce
Commission authorizing the replacement and/or reconstruction of
the highway underpass at the intersection of the tracks of The
Burlington Northern and Santa Fe Railway Company and Peoria
County Highway 40, DOT No. 004603L, Milepost 145.01 and
requesting that a substantial portion of the project cost be borne
by the Grade Crossing Protection Fund of the Motor Fuel Tax
Law.

ORDER

By the Commission:

On June 15, 2004, the County of Peoria ("County") filed with the Illinois Commerce Commission ("Commission") a verified petition in the above captioned matter naming as respondents The Burlington Northern and Santa Fe Railway Company ("Railroad") and State of Illinois, Department of Transportation, ("Department").

Pursuant to due notice, the matter came on for hearing before a duly authorized Administrative Law Judge of the Commission at the Commission's Springfield offices on September 15, 2004. Counsel for the County and the Railroad entered an appearance. Henry Humphries, of the Commission's Transportation Division, Rail Safety Section, entered an appearance on behalf of Commission staff. Jeff Harpring, representing the Illinois Department of Transportation, also entered an appearance.

The County's witnesses included Tom McFarland, Peoria County Engineer, and Lucinda Loss representing Hanson Professional Services, an engineering consultant hired by the County for the subject project. Both witnesses provided testimony and submitted evidence for the record. The Railroad's witness, Cheryl Townlian, also submitted evidence. At the conclusion of the hearing, the case was marked "Heard and Taken."

The County requested an Order from the Commission authorizing the replacement or reconstruction of the highway underpass structure located at the intersection of Peoria County Highway (CH) 40 and the Railroad's track (**AAR/DOT 004 603L, milepost 145.01**), and further requested the Grade Crossing Protection Fund ("GCPF") pay a substantial portion of the cost. The Railroad operates two (2) main line tracks in a generally east-west direction through the County. The Railroad operates fifty-two (52) trains during a twenty-four (24) hour period at a maximum timetable speed of seventy (70) mph. CH 40 extends generally in a north-south direction through the County. CH 40 carries approximately 1750 vehicles north and 1550 vehicles south of the structure during a twenty-four (24) hour period. The road is posted for fifty-five (55) mph. The existing structure is a one-lane underpass having a vertical clearance of eleven feet (11'), and horizontal clearance of sixteen feet (16'). There is a STOP Sign on both roadway approaches to the structure. A vehicle must stop, look for oncoming traffic and proceed only after ascertaining that it is safe to proceed. The proposed structure would have a vertical clearance of twenty-eight feet (28') and a horizontal clearance of thirty feet (30'), and accommodate two lanes of vehicular traffic (one lane in each direction) to pass under the Railroad's tracks simultaneously.

The County has obtained federal funding for the project. The total estimated cost of the project is \$3,513,810. The County requests that the GCPF pay 60% of the construction costs. The County will pay the remaining 40%, utilizing federal funding for 80% of that cost. The costs associated with preliminary engineering, construction engineering and land acquisition are not included in the overall estimated cost of the project, and will be paid 100% by the County. No assistance from the GCPF is being sought for these items. The Railroad will be responsible for constructing the new structure and the County will be responsible for constructing the new roadway. The County will maintain the structure from the pier caps down, including the roadway, and the Railroad will maintain the structure from the pier caps up, including the track structure. The Railroad will take approximately sixty (60) days to construct the bridge, commencing in March-2005. The County stated that it anticipates all roadway construction will be completed within twelve (12) months after the new structure is completed.

The Commission, having given due consideration to the entire record herein, finds that:

- 1) the Commission has jurisdiction of the parties hereto and the subject matter herein;
- 2) the recitals of fact set forth in the prefatory portion of this Order are supported by evidence of record and are hereby adopted as findings of fact;
- 3) public safety requires that the work proposed in the petition and set forth in the prefatory portion of this Order be completed as set forth in Petitioner's Exhibits A-G and Respondent's 1 admitted into evidence;

- 4) the cost of the project shall be divided as follows:

Cost Division - CH 40 Bridge Project

Item	Estimated Cost	GCPF	County	Railroad
Construct New Railroad Bridge	\$2,452,036	60% ¹	40% ²	0% ³
Construct New Roadway	\$1,061,774	60% ¹	40% ²	0%
Preliminary Engineering, Construction Engineering, & Land Acquisition	No Estimate ⁴	0%	100% ⁴	0%
Total	\$3,513,810⁴	\$2,108,286	\$1,405,524⁴	\$0.00

Notes:

- ¹ Grade Crossing Protection Fund assistance is limited to 60% of the construction costs, not to exceed \$2,108,286, for the new Railroad Bridge and new Roadway.
- ² Peoria County will pay all remaining construction costs for the Railroad Bridge and new Roadway; Peoria County will be responsible for constructing the new roadway. The County will maintain that part of the new structure from the pier caps down, including the roadway.
- ³ The Burlington Northern and Santa Fe Railway Company County will be responsible for constructing the new structure and the Railroad will maintain that part of the new structure from the pier caps up, including the track structure.
- ⁴ Preliminary engineering, construction engineering, and land acquisition not shown in the total estimated cost; Peoria County will pay 100% of these costs.

- 6) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions;
- 7) since federal funding is being utilized for the bridge and roadway improvements at the subject location, all such work will be covered by appropriate provisions of Title

23, Chapter I, Subchapter G, Part 646 of the Federal-Aid Policy Guide adopted Dec. 9, 1991;

- 8) the County and Railroad should have bi-monthly coordination meetings, unless agreed to by each of them that any meeting is not necessary, until the completion of the projects.

IT IS THEREFORE ORDERED that Peoria County and the Burlington Northern and Santa Fe Railway Company be, and they are hereby, authorized to replace the highway underpass structure and realign the roadway at the intersection of County Highway 40 and the tracks of The Burlington Northern and Santa Fe Railway Company (AAR/DOT #004 603L, Milepost 145.01), located near Princeville, Peoria County.

IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company and Peoria County be, and they are each hereby, required and directed to proceed immediately in performing its work as set forth in the prefatory portion of this Order, and shall complete its work within eighteen months (18) from the date of this Order.

IT IS FURTHER ORDERED that the cost of making the improvements herein required shall be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, as set forth in Finding 4, hereinabove.

IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company and Peoria County be, and they are each hereby, required and directed to conduct bi-monthly coordination meetings, unless agreed to by each party that any meeting is not necessary, until the completion of the projects.

IT IS FURTHER ORDERED that since federal funding is being utilized for the bridge and roadway improvements at the subject location, all such work shall be covered by the appropriate provisions of Title 23, Chapter I, Subchapter G, Part 646 of the Federal-Aid Policy Guide adopted Dec. 9, 1991.

IT IS FURTHER ORDERED that all bills relating to the construction of the new railroad bridge shall be paid in the following manner: Assistance from the Grade Crossing Protection Fund shall be used to pay 60% of the construction costs for the new railroad bridge and the new roadway, in an amount not to exceed \$2,452,036. 80% of the remaining construction costs for the new railroad bridge shall be paid by the Illinois Department of Transportation utilizing Federal STR funds, in an amount not to exceed \$784,651.00. The County shall be responsible for all remaining construction costs for the new railroad bridge and the new roadway, as well as all costs for preliminary engineering, construction engineering, and land acquisition associated with the new railroad bridge.

IT IS FURTHER ORDERED that all bills associated with construction of the new roadway shall be handled through procedures established under the Illinois Department

of Transportation's letting process. The Burlington Northern and Santa Fe Railway Company shall submit two copies of bills for reimbursements from the Grade Crossing Protection Fund, and the Federal STR portion to the Illinois Department of Transportation's District Four Bureau of Local Roads and Streets, located at 401 Main Street, Peoria, IL 61602. Upon receipt and review of the bills, the Illinois Department of Transportation's District Four Bureau of Local Roads and Streets will prepare an invoice and forward the bills for payment to the Fiscal Control Unit of the Illinois Department of Transportation's Bureau of Local Roads and Streets, located at 2300 South Dirksen Parkway, Springfield, Illinois, 62764. The Burlington Northern and Santa Fe Railway Company shall submit bills directly to Peoria County for the County's share of the new railroad bridge.

IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company and Peoria County shall each at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the progress each has made toward completion of the work herein required. Each progress report shall include the Commission Order Number, the Order Date, the project completion date as noted in this Order, crossing information (Inventory Number and Railroad Milepost), type of improvement, and project manager information (the name, title, mailing address, phone number and facsimile of the County and Railroad employee responsible for management of the project, respectively.)

IT IS FURTHER ORDERED that Peoria County and the Burlington Northern and Santa Fe Railway Company shall each submit a written notice, to the Director of Processing, Transportation Bureau of the Commission, of the date the work herein required of it has been completed; said notice shall be submitted within five (5) days after said completion date.

IT IS FURTHER ORDERED that, any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that, any person requesting a extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED that, requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension Of Time or a Petition For Supplemental Order, the

person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that, the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Orders and Requests For Extension Of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review Law.

By Order of the Commission this 20th day of October, 2004.

Edward C. Husley ₂

Chairman

JUDGE	<i>[Signature]</i>
SECTION CHIEF	
ORDERS SUPERVISOR	<i>[Signature]</i>